

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CONSTEEL ERECTORS, INC.,)	4:08CV3038
)	
Plaintiff,)	MEMORANDUM
v.)	AND ORDER
)	
SCHARPF'S CONSTRUCTION, INC.;)	
KRAUS-ANDERSON CONSTRUCTION)	
COMPANY; JAMES SCHARPF; JASON)	
RUSNAK; MENARDS, INC.; and)	
TRAVELERS CASUALTY AND)	
SURETY COMPANY OF AMERICA,)	
)	
Defendants.)	

This matter is before the court on the plaintiff's amended motion for default judgment against two defendants, Scharpf's Construction, Inc., and James Scharpf ([filing 21](#)). Both defendants were served with summons in February 2008, but have failed to plead or otherwise defend the claims made against them.¹ Consequently, I will direct the clerk of the court to enter a default against each defendant pursuant to Federal Rule of Civil Procedure 55(a).

Although the plaintiff has requested that the clerk enter a default judgment pursuant to Federal Rule of Civil Procedure 55(b)(1), and has filed the affidavit of its president, Rod Wolf, to establish that "[t]he principle [sic] sum of \$285,138.44 is

¹ In response to a show cause order that was entered by Magistrate Judge Piester on June 2, 2008, the plaintiff has filed the affidavit of the defendant James Scharpf, who is also the president and owner of the defendant Scharpf's Construction, Inc., to establish that these defendants consented to the removal of this action from the District Court of Douglas County, Nebraska. ([Filing 30-2](#), Attach. 1.) Based on this showing, it appears that the court has subject matter jurisdiction.

rightfully due and owing to Plaintiff by Defendants Scharpf's Construction, Inc. and James Scharpf pursuant to the agreement entered into with ConSteel Erectors, Inc.” ([filing 18](#)), it appears from the pleadings that the principal amount owing under the agreement is \$240,000.00, assuming completion, and that the additional \$45,138.44 is for “extra services and equipment [provided] to the project beyond those required by the Subcontract Agreement.” ([Filing 1](#) at CM/ECF p. 7.) The plaintiff has not shown why Scharpf's Construction, Inc., is liable for this additional sum. Neither has the plaintiff shown why James Scharpf is personally liable for the alleged breach of contract. The claim for prejudgment interest is also questionable.

Because there are unresolved issues, the defendant's motion will be treated as a Rule 55(b)(2) motion for entry of a default judgment by the court, and a hearing will be scheduled. All evidence will be presented by affidavit, which must be filed prior to the hearing, along with a supporting brief.

IT IS ORDERED that the plaintiff's motion for default judgment ([filing 21](#)) is granted in part, as follows:

1. Pursuant to Federal Rule of Civil Procedure 55(a), the clerk of the court shall enter a default against the defendants Scharpf's Construction, Inc., and James Scharpf.
2. On or before July 21, 2008, the plaintiff shall file a brief and affidavits in support of its motion for default judgment, specifically addressing the issues identified in this memorandum and order.
3. Pursuant to Federal Rule of Civil Procedure 56(b), a hearing shall be conducted by the court on Wednesday, July 23, 2008, at 1:00 p.m., in Courtroom No. 1, Robert V. Denney Federal Building, 100 Centennial Mall North, Lincoln, Nebraska, for the purpose of receiving evidence to

determine the truth of the averments of the plaintiff's complaint and the amount of damages and prejudgment interest, if any.

4. The clerk of the court shall send a copies of this memorandum and order to the following addresses:

Scharpf's Construction, Inc.
c/o John Wayne Cox
512 Spring Street
Galena, Illinois 61036

James Scharpf
507 Jo Daviess Street
Galena, Illinois 61036

IT IS FURTHER ORDERED that, in all other respects, the court's ruling on the plaintiff's motion for default judgment ([filing 21](#)) shall be held in abeyance, pending completion of the aforesaid hearing.

July 1, 2008.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge